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In the Supreme Court of the United States

OCTOBER TERM, 1970

NO. 113

HONORABLE BERNARD M. DECKER,
UNITED STATES DISTRICT JUDGE, ET AL.,
Petitioners,

vs.

HARPER & ROW, PUBLISHERS, INC., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MOTION OF THE OHIO STATE BAR ASSOCIATION FOR LEAVE TO JOIN IN THE BRIEF OF THE AMERICAN BAR ASSOCIATION AS AMICUS CURIAE

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The Ohio State Bar Association (the Association) respectfully moves for leave to join in the brief of the American Bar Association as *amicus curiae*. Respondents and *amicus curiae* have consented to the addition; the consent of the Petitioners was requested but has been withheld.

The Association represents the interests of the Bar in the nation's sixth largest state. The Association is concerned that approval of the "control group test" adopted by the District Court but rejected by the Court of Appeals.

would fundamentally alter the nature of the attorney-client relationship to the detriment of both the profession and the public. This is true whether the attorney is gathering information to conduct litigation, to counsel a client on a specific matter, or simply to learn more of his client's affairs so as better to advise him in the future. The need for a clear and liberal standard, which the "control group test" is not, is particularly acute in the general counseling context where the interests of justice are best served by a frank and open relationship between lawyer and client. In Ohio, state law would clearly prohibit the discovery in question here. Ohio Rev. Code §2317.021. Yet the Ohio policy of promoting open and confidential relationships between lawyer and client may be thwarted if the District Court's rule is adopted as the standard for the federal courts: a client and lawyer talking generally do not know whether discovery might be sought in state or federal forum.

Because the significance of the issues raised extends far beyond the facts here at issue and will have a heavy impact on the daily practice of law, the Association feels that direct presentation of the views of the legal profession will aid the Court in focusing on the continuing need for a broad definition of the attorney-client privilege. At the same time, the Association recognizes that a concise presentation aids both the Court and the parties. Therefore it desires officially to register its agreement with the positions expressed in the brief of the American Bar Association as *amicus curiae* rather than to file an independent brief. While this procedure is not frequently employed, the Court has recognized its usefulness in the past, *Federal Power Commission v. Southern California Edison Co.*, 375 U.S. 919 (1963), and the Association feels that the granting of its motion will be equally beneficial in this case.

WHEREFORE, the Association prays that it be granted leave to join in the brief of the American Bar Association as *amicus curiae*.

Respectfully Submitted,

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